

**AN ORDINANCE BY  
CITY UTILITIES COMMITTEE**

**11- 0 -0899**

**AN ORDINANCE AUTHORIZING THE MAYOR, ON BEHALF OF THE DEPARTMENT OF PUBLIC WORKS, TO ENTER INTO AN ENCROACHMENT AGREEMENT FOR NON-CONFORMING USES WITH THE BANK BUILDING, LP, OWNER OF REAL PROPERTY LOCATED AT 55 MARIETTA STREET, N.W., FOR THE PURPOSE OF PERMITTING AN EXISTING BASEMENT WHICH PRESENTLY EXTENDS INTO THE PUBLIC RIGHT-OF-WAY; TO WAIVE THE APPLICATION FEE AND YEARLY INSPECTION FEE; AND FOR OTHER PURPOSES.**

**WHEREAS**, Bank Building, LP (“Bank Building”) owns real property located at 55 Marietta Street, N.W., in Atlanta, Georgia (“Property”); and

**WHEREAS**, the property currently has an existing basement which extends into the public right-of-way approximately One Hundred Eighty Five (185) feet in length and Thirteen (13) feet in width; and

**WHEREAS**, the City of Atlanta’s (“City”) Code of Ordinances, at Sections 138-20, 138-22 and 138-24, require that an Encroachment Agreement be entered into between the City and Bank Building for authorization to allow the basement to remain in the public right-of-way and for authorization for Bank Building to continue to maintain the existing basement in the public right-of-way; and

**WHEREAS**, Bank Building has been exempted from paying the application and yearly inspection fees as contained in Section 138-20(a) and Appendix B of the City Code of Ordinances; and

**WHEREAS**, the Commissioner of the Department of Public Works has reviewed the plans for the right-of-way encroachment and has determined that the existing basement will not adversely impact the ability of the affected right-of-way to handle pedestrian traffic or otherwise to perform its intended public function; and

**WHEREAS**, Bank Building desires to maintain the existing basement; and

**WHEREAS**, Bank Building has agreed to conform to the conditions set out in the City Code of Ordinances at Sections 138-20, 138-22 and 138-24.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:**

**SECTION 1:** That the Mayor is authorized, on behalf of the Department of Public Works, to enter into an Encroachment Agreement for Non-Conforming Uses, as outlined in Section 138, Article II, of the City’s Code of Ordinances with the Bank Building, LP, for the purpose of granting to Bank Building the right to continue to use and the obligation to maintain a basement in the public right-of-way located at 55 Marietta Street, N.W., with the encroachment being

located on Marietta Street, N.W., between Forsyth Street, N.W. and Fairlie Street, N.W., in Atlanta, Georgia as depicted in Exhibit "A" attached hereto, in a form and pursuant to the conditions determined by the Commissioner of the Department of Public Works and the City Attorney, to be desirable and in the best interests of the City of Atlanta for this transaction.

**SECTION 2:** That the plans and specifications for said basement shall be submitted for the review and approval of the Commissioner of the Department of Public Works.

**SECTION 3:** That Bank Building is exempted from paying the application and yearly inspection fees as contained in Section 138-20(a) and Appendix B of the City Code of Ordinances, and said fee requirements are hereby waived.

**SECTION 4:** That Bank Building shall indemnify the City for any damages to persons or properties resulting from the maintenance of said basement.

**SECTION 5:** That Bank Building shall comply with the conditions set out at Sections 138-20, 138-22 and 138-24 of the City's Code of Ordinances.

**SECTION 6:** That that the City Attorney is directed to prepare an Encroachment Agreement, acceptable as to form, for execution by the Mayor and Bank Building.

**SECTION 7:** That the Agreement shall not become binding upon the City, and the City shall incur neither obligation nor liability thereunder until the Agreement has been approved as to form by the City Attorney, executed by the Mayor, attested to by the Municipal Clerk and delivered to Bank Building, LP.

**Part II: Legislative White Paper:** (This portion of the Legislative Request Form will be shared with City Council members and staff)

**A. To be completed by Legislative Counsel:**

**Committee of Purview:** City Utilities Committee

**Caption:** AN ORDINANCE AUTHORIZING THE MAYOR, ON BEHALF OF THE DEPARTMENT OF PUBLIC WORKS, TO ENTER INTO AN ENCROACHMENT AGREEMENT FOR NON-CONFORMING USES WITH THE BANK BUILDING, LP, OWNER OF REAL PROPERTY LOCATED AT 55 MARIETTA STREET, N.W., FOR THE PURPOSE OF PERMITTING AN EXISTING BASEMENT WHICH PRESENTLY EXTENDS INTO THE PUBLIC RIGHT-OF-WAY; TO WAIVE THE APPLICATION FEE AND YEARLY INSPECTION FEE; AND FOR OTHER PURPOSES.

**Council Meeting Date:** July 5, 2011

**Requesting Dept.:** Department of Public Works

**B. To be completed by the department:**

**1. Please provide a summary of the purpose of this legislation (Justification Statement).**

The purpose of this legislation is to enter into an Encroachment Agreement with the Bank Building, LP, for property located at 55 Marietta Street to permit an existing basement that currently extends into the public right-of-way.

**2. Please provide background information regarding this legislation.**

**3. If Applicable/Known:**

- (a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):**
- (b) **Source Selection:**
- (c) **Bids/Proposals Due:**
- (d) **Invitations Issued:**
- (e) **Number of Bids:**

**(f) Proposals Received:**

**(g) Bidders/Proponents:**

**(h) Term of Contract:**

**4. Fund Account Center:**

**5. Source of Funds:**

**6. Fiscal Impact:**

**7. Method of Cost Recovery:**

**This Legislative Request Form Was Prepared By:**

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: CANDACE L. BYRD

Dept.'s Legislative Liaison: Soraya Belgrave

Contact Number: (404) 330-6002

Originating Department: Department of Public Works

Committee(s) of Purview: City Utilities Committee

Chief of Staff Deadline: May 27, 2011

Anticipated Committee Meeting Date(s): June 28, 2011

Anticipated Full Council Date: July 5, 2011

Legislative Counsel's Signature: Saul Schultz

Commissioner's Signature: [Signature]

Chief Information Officer Signature (for IT Procurements) [Signature]

Chief Procurement Officer Signature: \_\_\_\_\_

**CAPTION**

AN ORDINANCE AUTHORIZING THE MAYOR, ON BEHALF OF THE DEPARTMENT OF PUBLIC WORKS, TO ENTER INTO AN ENCROACHMENT AGREEMENT FOR NON-CONFORMING USES WITH THE BANK BUILDING, LP, OWNER OF REAL PROPERTY LOCATED AT 55 MARIETTA STREET, N.W., FOR THE PURPOSE OF PERMITTING AN EXISTING BASEMENT WHICH PRESENTLY EXTENDS INTO THE PUBLIC RIGHT-OF-WAY; TO WAIVE THE APPLICATION FEE AND YEARLY INSPECTION FEE; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT: (if any)

Mayor's Staff Only

Received by CPO: \_\_\_\_\_

(date)

Received by LC from CPO: \_\_\_\_\_

(date)

Received by Mayor's Office: [Signature]

(date)

Reviewed by: [Signature]

(date)

Submitted to Council: \_\_\_\_\_

(date)